

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT**

GARRETT AND RALPH SITTS, et al., PLAINTIFFS, v. DAIRY FARMERS OF AMERICA, INC., and DAIRY MARKETING SERVICES, LLC, DEFENDANTS.	Civil Action No. 2:16-cv-00287-cr
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**EXHIBIT 6 TO
THE JUNE 2, 2020 DECLARATION OF
ALFRED C. PFEIFFER JR.**

6/2/2020

Is Anywhere Safe for a Jury Trial During the Covid-19 Pandemic? Try a School Gym. - WSJ

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<https://www.wsj.com/articles/is-anywhere-safe-for-a-jury-trial-during-the-covid-19-pandemic-try-a-school-gym-11589893201>

U.S.

Is Anywhere Safe for a Jury Trial During the Covid-19 Pandemic? Try a School Gym.

Extraordinary measures illustrate challenges courts around the U.S. face in midst of public-health crisis



The Libby Middle High School gymnasium in northwestern Montana will serve as a courtroom that accommodates social distancing.

PHOTO: LIBBY MIDDLE HIGH SCHOOL

By [Rebecca Davis O'Brien](#)

May 19, 2020 9:00 am ET

In the remote Kootenai Valley of northwestern Montana, the Libby Middle High School gymnasium has always been the main venue for youth sports and awards ceremonies. Beginning next month, it will become a courtroom.

The gym, home to the Libby Loggers, is perhaps the only place in Lincoln County where 100 prospective jurors can gather with social-distancing and other safety measures to be selected for a domestic-assault trial set to begin June 9—also possibly in the gym. All participants will get regular temperature checks, masks and hand sanitizer; contact with court staff will be limited, and surfaces are to be regularly disinfected.

“You have some absolute constitutional rights that defendants have—a jury of 12 people, from their community, in a timely fashion,” District Court Judge Matthew J. Cuffe said. At the same time, prospective jurors “have the right to a clean, healthy and safe environment.”

<https://www.wsj.com/articles/is-anywhere-safe-for-a-jury-trial-during-the-covid-19-pandemic-try-a-school-gym-11589893201>

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These extraordinary measures—in a sparsely populated state with the second-lowest confirmed number of Covid-19 cases—illustrate the challenges facing courts around the U.S. as they try to resume jury trials during a public-health crisis.



Emily Miskel, a Texas judge, oversaw a one-day Zoom jury trial in a real-life civil dispute, with a nonbinding verdict.

PHOTO: MARK MISKEL

Nationwide lockdowns have put a near total halt to jury trials, a bedrock of the American justice system. Jury service, by its nature, brings together large groups of people, often into cramped quarters, before sending them back home. Operating under emergency orders during the coronavirus pandemic, most state and federal courts have conducted arraignments, oral arguments and even drug courts by video or teleconference.

Maintaining an indefinite pause on jury trials until the pandemic's end isn't an option. The U.S. Constitution guarantees criminal defendants the right to a speedy public trial by an impartial jury, while speedy-trial laws set time limits for filing charges and bringing cases to trial.

State courts handle about 106,000 trials each year, tens of thousands of which have already been delayed because of the coronavirus shutdowns, said Paula Hannaford-Agor, director of the center for jury studies at the National Center for State Courts, a nonprofit organization now leading Covid-19 response groups of judges and court administrators from around the country.

“That’s been the single biggest headache—how are you going to resume [jury trials]”? Ms. Hannaford-Agor said. “There is a lot of very creative thinking going on around this.”

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Mississippi Chief Justice Michael Randolph is allowing 40 counties with two or fewer Covid-19-related deaths to begin the process of bringing in juries.

PHOTO: CHRIS TODD FOR THE MISSISSIPPI SUPREME COURT

The result will be a patchwork of cautious improvisations, reflecting distinct court rules, local public-health guidance and the varying tolls Covid-19 has taken state to state. The proceedings—whether in gymnasiums or in reconfigured courtrooms or online—will bear little resemblance to the formal trials familiar to most Americans.

On Monday, a Texas judge oversaw a one-day Zoom jury trial in a real-life civil dispute, with a nonbinding verdict. It went well, said the judge, Emily Miskel. “Only a normal amount of weird stuff happened,” she said of the virtual trial.

State courts in Los Angeles, among the country’s busiest, will reopen in late June, with social-distancing and sanitizing measures in place and face coverings required for court officers and visitors.

County courts in rural Mississippi have begun mailing jury summonses for trials, advising potential jurors to bring masks and to stay alert for symptoms. Mississippi’s chief justice, Michael Randolph, said he tracked public-health data before allowing 40 counties with two or fewer deaths related to Covid-19 to begin the process of bringing in juries.

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Court staff and lawyers in Michigan recently held a mock jury selection over Zoom to test the state's ability to conduct trials online.

“We can’t make decisions based on fear,” Chief Justice Randolph said.

In harder-hit places such as New York City, with more than 15,000 reported deaths, jury trials are certainly months away, court officials said. In Manhattan federal court, where a criminal jury trial has tentatively been scheduled for the first week of September, extensive safety measures are in the works, including plexiglass barriers surrounding witness stands, safety kits and an expanded jury box for jurors, and limitations on elevator use.

Recently in Michigan, also hard-hit, court staff and lawyers held a mock jury selection over Zoom to test the state's ability to conduct trials online.

The “jurors”—volunteers appearing from home—raised their right hands and swore an oath before a real circuit court judge seated in an empty courtroom north of Detroit, in front of an American flag. The mock defendant, a court staff member “charged” with assault, was represented by a real public defender, who questioned jurors along with a real state prosecutor.

There were hitches. One juror was dismissed for technical difficulties. Another apologized: “My giant dog walked into the room.”

Michigan’s Chief Justice Bridget Mary McCormack said her aim is to make Zoom trials possible for criminal defendants who want them. “I certainly don’t think there is going to be an easy way in the near future to have jury trials the way we’ve had them,” Chief Justice McCormack said.

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Michigan's Chief Justice Bridget Mary McCormack said a goal is to make Zoom trials possible for criminal defendants who want them.

PHOTO: MICHIGAN SUPREME COURTS

The prospect of returning to jury trials, particularly in criminal cases, has alarmed some in the criminal-justice world, who fear the spread of Covid-19 among defendants, lawyers and staff. Prisons and jails have experienced some of the worst outbreaks. Some people expressed concern about masks' interfering with the ability to examine witnesses or consider a prospective juror.

There is substantial skepticism among defense lawyers about Zoom for criminal trials, where an in-person rapport with juries and witnesses is hard to replicate online.

"There's no way we would effectively represent a client in a criminal trial by Zoom," said Brian Bieber, a Florida attorney on the board of the National Association of Criminal Defense Lawyers.

Federal-court administrators have laid out a four-phase process for resuming courthouse operations that requires a "sustained downward trending" in daily Covid-19 case counts, along with a rollback of shelter-in-place orders, before jury proceedings are allowed.

SHARE YOUR THOUGHTS

Would you be willing to sit on a jury if the court took safety measures to protect your health, or should trials be put off indefinitely? Join the conversation below.

Federal officials are concerned about prospective jurors' finding it easier to recuse themselves. Retirees, often a staple of jury pools, are particularly vulnerable to Covid-19 and may opt out of service. Parents may struggle with child care; many will be scrambling to find work.

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But the “burden on justice” is too great to hold off for long, said Chief Judge Nannette Jolivet Brown, of Louisiana’s Eastern District federal courts, based in New Orleans.

“Justice delayed is often no justice at all,” Judge Brown said.

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